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[New Hampshire Code of Administrative Rules](#)
[Env-Wc 200](#)

CHAPTER Env-WC 200 PROCEDURAL RULES

Statutory Authority: RSA 21-O:14, IV

REVISION NOTE:

Document #5469, effective 9-17-92 readopted with amendments Chapter Env-WC 200, which made extensive changes to the wording and numbering. The filings prior to Document #5469 are as follows:

#4657, effective 7-28-89

#5351, effective 3-11-92

PART Env-WC 201 PURPOSE, APPLICABILITY AND DEFINITIONS

Env-WC 201.01 Purpose. The rules in this chapter shall govern the general procedures by which the water council conducts adjudicatory proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction. These rules shall be construed to secure the just, efficient, and accurate resolution of council proceedings in accordance with recognized principles of due process and the requirements of RSA 541-A.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 201.02 Applicability.

(a) The procedures set forth in this chapter shall apply to all appeals allowed by law to be taken to the council.

(b) This chapter shall not apply to the following matters, since they are not allowed by law to be appealed to the council:

(1) Pursuant to RSA 21-O:14, I, any decision pertaining to rulemaking or declaratory rulings as provided for in RSA 541-A;

(2) Pursuant to RSA 485-A:40, any approvals of plans or specifications pursuant to RSA 485-A:29-44, "Sewage Disposal Systems";

(3) Pursuant to RSA 485-A:50, VIII, any annual assessments levied against a

municipality pursuant to RSA 485-A:50;

(4) Pursuant to RSA 21-O:5-a, decisions made pursuant to RSA 482-A.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 201.03 Definitions.

- (a) "Council" means the water council established by RSA 21-O:7.
- (b) "Council clerk" means the person designated by the commissioner of the department pursuant to RSA 21-O:3, VIII as clerical support staff to the council.
- (c) "Department" means the department of environmental services.
- (d) "Director" means the director of the water division of the department of environmental services.
- (e) "Division" means the water division of the department of environmental services.
- (f) "Party" means any person having a direct interest in an appeal to the council filed pursuant to Env-WC 203.
- (g) "Person" means any individual, partnership, joint venture, association, corporation, trust, agency, private or municipal corporation, any political subdivision of the state or of the United States, or any other private entity, governmental entity, including the division, or quasi-governmental entity.
- (h) "Sitting member" means an individual who has been appointed to the council and to whom the oath of office has been administered, or that person's designee, and includes any member of the council whose term has expired until such time as a replacement is appointed, but does not include any member who has resigned from the council, regardless of whether a replacement has been appointed.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

PART Env-WC 202 GENERAL PROCEDURES

Env-WC 202.01 Quorum. A quorum of the council shall be a simple majority of the total number of sitting members, provided, however, that in the context of an appeal, a quorum shall be a simple majority of those sitting members who have not recused themselves from the hearing.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 202.02 Computation of Time.

- (a) All time periods referenced in these rules shall be calendar days.
- (b) Computation of any period of time referred to in these rules shall begin with the first day following the day on which the act which initiates such period of time occurs, and shall include the last day of the period so computed.
- (c) If the last day of the period so computed falls on a Saturday, Sunday, or state legal holiday, then the time shall be extended to include the first business day following the Saturday, Sunday, or state legal holiday.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 202.03 Filing of Documents.

- (a) Any correspondence filed with the council shall be filed by mailing or delivering the original to the division's office as follows:

Water Council

c/o DES, Water Division

6 Hazen Drive

PO Box 95

Concord, NH 03302-0095

(b) Any document required or allowed by these rules to be filed in conjunction with an appeal shall be filed as specified in (a), above, together with 20 copies of the document.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 202.04 Date of Issuance or Filing.

(a) All orders, decisions, notices, or other written correspondence or documents issued by or at the direction of the council shall be presumed to have been issued on the date noted on the document.

(b) All requests for findings or conclusions, correspondence, motions, petitions, applications, and any other written documents governed by these rules shall be presumed to have been filed with or received by the council on the actual date of receipt by the council clerk as specified in Env-WC 202.03.

(c) All orders, decisions, notices, or other written correspondence or documents issued by or at the direction of the council and sent to the last address of record shall be presumed adequate notice.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 202.05 Communications with the Council.

(a) All communications with the council shall be filed in accordance with Env-WC 202.03(b) and shall identify the name and address of the communicator and the subject matter of the communication. No person shall submit any documents or exhibits or otherwise communicate any other information pertaining either directly or indirectly to the subject matter of any pending appeal directly to any member of the council.

(b) Any member of the council receiving any direct communication from any person which pertains directly or indirectly to the subject matter of any pending appeal shall, at the next council meeting, notify the council chairman on the record of the improper communication and submit a copy of the same, or, if the communication was made orally, relate the substance of the communication to the council.

(c) No information shall be considered as evidence or made part of the record in any proceeding before the council that is not introduced as evidence in accordance with Env-WC 203.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 202.06 Notice. All orders, decisions, notices, or other written correspondence or documents relating to an appeal and issued by or at the direction of the council, or by the parties to an appeal, and sent to the last address of record shall be presumed adequate notice.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

PART Env-WC 203 APPEALS PROCEDURES

Env-WC 203.01 Applicability. The procedures set forth in this part shall apply to all appeals allowed by law to be taken to the council.

Source. (See Revision Note

at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.02 Time for Filing of Appeals. Any appeal shall be filed within 30 days of the date the decision being appealed was issued. As specified in Env-WC 202.04, the appeal shall be deemed to have been filed on the date it is received by the council clerk.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.03 Notice of Appeals.

(a) Appeals shall be commenced by filing a notice of appeal as specified by this section with the council.

(b) A notice of appeal shall include the following:

- (1) A clear and concise statement of the relief sought and the statutory provision under which the relief is sought;
- (2) The exact legal name of each person seeking the relief and the person's address;
- (3) A concise and explicit statement of the facts upon which the council is expected to reply in granting relief; and
- (4) A copy of the decision or order which is being appealed.

(c) A notice of appeal may also include such other information as the appellant deems pertinent and relevant, and there may be attached to said notice exhibits, illustrations, and sworn written testimony.

(d) The appellant shall also provide a copy of the notice of appeal to the director and to the commissioner of the department.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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Env-WC 203.04 Identification and Distribution of Notice of Appeal.

(a) Upon receipt of a notice of appeal, the council clerk shall assign a docket number to the notice of appeal and shall distribute a copy of the notice of appeal to each member of the council.

(b) The docket number assigned by the council clerk shall be used by all parties to identify all correspondence and other documents relating to the appeal, including any exhibits used at a hearing, subsequently submitted to the division and the council.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.05 Scheduling.

(a) The council shall schedule an appeal hearing no later than the second regularly scheduled council meeting following receipt by the council of a notice of appeal that complies with Env-WC 203.03(b).

(b) Once a hearing date has been set, the council clerk shall send written notice of the date, time, and place of the hearing to the appellant, the division, and to all other persons known by the council to have a direct interest in the appeal. The notice shall include a statement that the hearing is to consider the issues raised in the notice of appeal, a statement of the legal authority under which the hearing is to be held, and a reference to the particular statutes and/or rules involved in the appeal.

(c) The council shall send the initial notice of the hearing to the appellant by certified mail, return receipt requested. If the certified mail is not accepted, the notice shall be delivered in hand to the appellant or, if the appellant is unavailable, to the appellant's representative.

(d) If other persons are known by the department to be interested in attending the hearing, the council shall send notice to such persons by first-class mail.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.06 Calendar of Hearings. The council clerk shall maintain a record of all appeals pending before the council.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.07 Failure to Appeal. If any party to whom notice of a hearing has been given in accordance with these rules fails to appear and fails to advise the council or division of such non-appearance in advance of the hearing, and the council determines that delaying the hearing to a later date would cause

undue inconvenience or prejudice to the party or parties present, the council shall hear the evidence and testimony of the parties present and shall render a decision thereon, subject to the provisions of Env-WC 203.08.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.08 Reconvening of Hearings.

(a) If a hearing is held in a party's absence pursuant to Env-WC 203.07, the party may file a motion to reconvene the hearing within 10 days after the date of the hearing.

(b) The motion shall:

(1) State the reason(s) why the party was absent from the hearing;

(2) State why the council or division was not notified of the absence in advance of the hearing; and

(3) Be supported by affidavits or other evidence.

(c) If the council determines that good cause exists to explain the party's failure to appear at the hearing and to explain the party's failure to notify the council or division in advance of the hearing, the council shall reconvene the hearing by scheduling another hearing. Good cause shall mean accident, sudden illness, death of a family member or other circumstance beyond the control of the party which prevents the party from attending the hearing and from notifying the council.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.09 Extensions of Time.

(a) Any party to an appeal may petition the council to extend any time limit established by these rules if meeting the prescribed time limit would unduly burden the party or if an extension is otherwise necessary to conduct a more effective hearing. A request for an extension shall be submitted in writing to the council prior to the expiration of the prescribed period and shall state the reason(s) for the extension request. A copy of any such request shall also be delivered in hand or by first-class mail to all other parties of record.

(b) Any other party may object to the request for filing a written objection with the council within 5 days of receipt of the request, stating the reasons why the request should not be granted.

(c) If there is no opposition to the request and if the council determines that the delay would not prejudice the interests of any other party to the appeal, the council shall grant the request. If an objection to a request is filed, the council shall consider the reasons for and against and shall rule on the request as on any other motion or appeal.

(d) The council shall notify all parties in writing of its ruling.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.10 Prehearing Conferences.

(a) After receiving a notice of appeal, the division can contact the appellant to schedule a prehearing conference to determine whether the matter can be resolved without the need for a formal hearing. If the parties agree to a resolution of the matter at the prehearing conference, then a stipulation or other settlement agreement or a withdrawal of the appeal shall be filed with the council prior to the council meeting for which the hearing had been scheduled.

(b) If a prehearing conference cannot be scheduled prior to the council meeting for which the hearing has been scheduled in accordance with Env-WC 203.05, then the hearing shall be rescheduled for the following council meeting.

(c) Nothing herein shall preclude any party or the council from requesting a prehearing conference in accordance with RSA 541-A:31, V. Any party may request that a prehearing conference pursuant to RSA 541-A:31, V be scheduled in lieu of the meeting required by (a), above.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.11 Appearance Before the Council. Any party to an appeal to the council or that party's designated representative may generally participate in the conduct of the appeal. Appearances shall be entered either in writing or into the record of the hearing.

Source. (See Revision Note

at chapter heading Env-WC
200) #5469, eff 9-17-92,
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eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.12 Intervenors. The presiding officer shall consider and grant or deny all petitions for intervenor status in accordance with the provisions of RSA 541-A:32. The order issued pursuant to RSA 541-A:32, V shall specify the extent to which the intervenor shall be considered a party for purposes of these rules.

Source. (See Revision Note
at chapter heading Env-WC
200) #5469, eff 9-17-92,
EXPIRED: 9-17-98

New. #6860, INTERIM,
eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.13 Representatives.

(a) Any party to a hearing before the council may be represented by an attorney licensed to practice law in New Hampshire or such other individual as the party may designate.

(b) Any party who wishes to be represented shall submit to the council a written authorization for the representation that is signed by the party and that identifies the name, address, and telephone number of the individual who will be representing the party.

(c) All representatives shall obtain and become familiar with these procedural rules prior to appearing before the council.

Source. (See Revision Note
at chapter heading Env-WC
200) #5469, eff 9-17-92,
EXPIRED: 9-17-98

New. #6860, INTERIM,
eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.14 Removal of Representatives. The council shall, upon a finding of misconduct by any representative appearing before the council, prohibit that individual from acting as a representative before the council for the pending matter. For purposes of this section, misconduct means behavior that is disruptive to the orderly conduct of the council's business or a consistent or recurring failure to meet deadlines. Prior to the imposition of such prohibition, the representative shall be given notice of the proposed prohibition and shall be provided an opportunity to address the council regarding why the prohibition should not be imposed. The council shall also provide an opportunity to comment on the proposed prohibition to the party represented and all other parties to the proceeding.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.15 Supplemental Materials. Memoranda, briefs, and other written materials designed to supplement a notice of appeal shall be filed with the council in accordance with Env-WC 202.03 no later than 3 weeks prior to the scheduled hearing on the appeal.

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New. #7011, eff 6-9-99

Env-WC 203.16 Burden of Proof.

(a) The appellant shall bear the burden of proving, by a preponderance of the evidence, that the decision that is being appealed was:

(1) Contrary to statute or rules; or

(2) Arbitrary and capricious.

(b) For motions, waiver requests, and other non-dispositive matters, the party asserting the truth of a statement shall bear the burden of proving, by a preponderance of the evidence, that the statement is true.

(c) For purposes of this section, proof by a preponderance of the evidence means that what is sought to be proved is more probable than not.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.17 Hearing Record.

(a) The record of the hearing shall include:

- (1) Notice(s) of the hearing;
- (2) The tape recording of the hearing;
- (3) All exhibits, motions, requests for findings and conclusions, and other written materials submitted by the parties; and
- (4) Any other item(s) specified by RSA 541-A:31, VI.

(b) All testimony shall be recorded. The council, upon request of a party, shall provide, at cost, a duplicate tape of the hearing. Any person desiring a transcript of the hearing prepared by a qualified stenographer shall provide the stenographer and shall bear all expenses associated with the preparation of the transcript. Any transcript so prepared shall be made available to the council for copying at the council's expense.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.18 Hearing Procedures.

(a) The presiding officer at a hearing shall be the chairman of the council if present and willing to preside. If the chairman is unavailable for any reason, the presiding officer shall be the vice-chairman, if available, or a

member of the council selected by those members present at the hearing.

(b) The presiding officer shall:

- (1) Rule on issues of evidence;
- (2) Regulate the course of the hearing;
- (3) Rule upon issues of procedures;
- (4) Administer oaths or affirmations; and
- (5) Take such other action that is necessary for the efficient and orderly conduct of the hearing, consistent with these rules and any other applicable state law.

(c) The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedures governing its conduct, and shall then proceed in accordance with this part.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.19 Testimony.

(a) All testimony of parties and other witnesses at a hearing, including persons allowed to testify pursuant to Env-WC 203.12, shall be made under oath or affirmation.

(b) Any person testifying before the council shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

(c) Any person testifying before the council shall be subject to cross-examination as provided in (f), below.

(d) Whenever it appears that testimony to be offered at the hearing would be more readily understood if presented in written form, the presiding officer shall require the party offering such testimony to submit the testimony in written form, provided such requirement will not substantially prejudice the interests of any party to the hearing. Upon request of the party who has been requested to submit written testimony, the presiding officer shall direct that the record be held open after the close of the hearing or that the hearing be continued to a later date for the sole purpose of allowing sufficient time to prepare the written submission. All persons offering testimony in written form shall be subject to cross-examination as provided in (f), below. This paragraph shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing pursuant to Env-WC 203.12.

(e) Direct testimony shall be offered in the following order:

- (1) The person who filed the notice of appeal and such witnesses as the person may call;
- (2) Any person other than division staff having a direct interest in the matter, including but not limited to the person to whom the permit or approval in dispute was issued, and such witnesses as the person may call;
- (3) Division staff members and such witnesses as the division may call; and
- (4) Representatives from other governmental agencies and such witnesses as the agencies may call.

(f) The presiding officer, members of the council, and legal counsel to the council shall cross-examine a witness at the conclusion of the testimony of that witness. The presiding officer shall allow other parties or their representatives a reasonable opportunity to cross-examine each witness. Cross-examination shall be by asking questions directly of the witness, so long as such direct questioning is not disruptive to the orderly conduct of the hearing. If the presiding officer determines that such cross-examination is disruptive to the orderly conduct of the hearing, then the presiding officer shall require the cross-examination to be conducted indirectly, by addressing questions to the witness through the presiding officer.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.20 General Evidence.

(a) Pursuant to RSA 541-A:33, II, the rules of evidence shall not apply.

(b) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the councilors, if relevant, can be used in the evaluation of all evidence submitted to the council.

(c) Whenever necessary for a full and fair consideration of the appeal, the presiding officer shall take official notice of relevant laws, official rules and transcripts of other hearings, judicially recognizable facts, generally recognized facts of common knowledge to the general public and physical, technical, or scientific facts within the council's specialized knowledge consistent with the requirements of RSA 541-A:33, V. The final decision of the council shall include those facts of which official notice were taken unless those facts are included in the transcript of the record.

(d) All documents, materials, and objects offered in evidence as exhibits shall be marked by the offering party with the docket number and shall, if accepted, be numbered or otherwise identified in a sequential manner. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide each member of the council and each party with a copy of such documents or photographs, unless such documents or photographs are determined by the presiding officer to be of such form, size, or character as not to be reasonably suitable for reproduction.

(e) All written testimony and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the division's offices in Concord during normal business hours.

(f) In any proceeding involving an application, the application filed with the division, including exhibits and amendments thereto, shall be placed into evidence by the division.

(g) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed as independent authorization for interlocutory appeals of rulings of the presiding officer.

(h) No information shall be considered as evidence or made part of the record in any proceeding before the council that is not introduced as evidence in accordance with this part.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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Env-WC 203.21 Motions.

(a) Motions shall be in written form, unless made in response to a matter asserted for the first time at the hearing. All motions shall contain a clear and concise statement of the facts and law which support the motion and shall state the specific relief or ruling requested. The moving party shall have the burden of persuasion on all matters raised in the motion.

(b) Written motions shall be included in the record of the proceeding. Oral motions shall be recorded in full on the tape of the hearing. All parties who would be adversely affected by the ruling sought in a motion shall have an opportunity to respond to the motion. For written motions, responses shall be in writing and shall be filed no later than 5 days after receipt of the motion. For oral motions, responses shall be made during the hearing at which the oral motion was made unless the presiding officer determines, based on the nature of the

motion, that it is appropriate to grant additional time to prepare a response to the motion.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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New. #7011, eff 6-9-99

Env-WC 203.22 Exhibits.

(a) Where evidence to be presented consists of numerical or graphic data and such evidence would make oral presentation difficult to follow, such evidence shall be presented in exhibit form. Exhibits may be summarized, supplemented, and explained.

(b) Space shall be provided in the upper right hand corner of each exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.

(c) The party offering an exhibit shall supply the original and 20 copies thereof to the council and shall provide a copy to all other parties of record, unless exempted under Env-WC 203.20(d).

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Env-WC 203.23 Requests for Findings and Conclusions. Any party represented by an attorney or other person as specified in Env-WC 203.13 shall submit requests for findings of fact and conclusions of law by the close of the record as provided in Env-WC 203.27. Any other party may submit such requests provided the requests are submitted by the close of the record as provided in Env-WC 203.27.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

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eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.24 Signatures. Every notice, motion, petition, complaint, brief, memorandum, or other document filed in connection with an appeal shall be signed by the filing party or by a duly-authorized representative of the filing party.

Source. (See Revision Note
at chapter heading Env-WC
200) #5469, eff 9-17-92,
EXPIRED: 9-17-98

New. #6860, INTERIM,
eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.25 Continuance.

(a) Any party may request that a hearing conducted pursuant to this part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party, a representative or critical witness, or that the parties believe that an informal resolution is possible and need more time to resolve the matter.

(b) A request for a continuance of a hearing made in advance of the hearing shall be in writing, shall state the reason(s) for the request, and shall be filed at least one week prior to the scheduled hearing date. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(c) If the council determines that reasonable cause exists and that no other party will be prejudiced by the delay, the council shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to ensure that reasonable notice shall be given of the time and place of such continued hearing.

Source. (See Revision Note
at chapter heading Env-WC
200) #5469, eff 9-17-92,
EXPIRED: 9-17-98

New. #6860, INTERIM,
eff 10-1-98, EXPIRED: 1-
29-99

New. #7011, eff 6-9-99

Env-WC 203.26 Recess and Adjournment. The council shall, from time to time, at the request of any party or on its own initiative, recess or adjourn any hearings as might be necessary for the orderly conduct of the proceeding.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.27 Close of the Record.

(a) After the conclusion of the hearing, no other testimony or exhibits shall be allowed into the record, except as allowed pursuant to (b), below.

(b) Prior to the conclusion of the hearing a party may request that the record be left open for a specified period of time in which to file evidence or arguments not available at the hearing. If the council determines that such evidence or arguments is necessary to a full consideration of the issues raised in the appeal, the presiding officer shall set a date by which the additional material shall be filed.

(c) The party filing such additional material shall also deliver or send copies of all items filed to all other parties of record.

(d) If any other party to the hearing requests time to respond to the material submitted, the presiding officer shall set a specific time period following filing of the material for the filing of a response. If any other party to the hearing requests the opportunity to cross-examine on the additional material submitted, the presiding officer shall set a date and time for a hearing at which cross-examination on the additional material submitted shall be allowed, if the presiding officer determines that cross-examination on the additional material is required for a full and true disclosure of the facts.

(e) The determination to allow cross-examination shall be based on:

- (1) The nature of the factual and legal issues in dispute in the proceeding;
- (2) The testimony and evidence submitted during the hearing and any cross-examination thereon; and
- (3) The nature of the additional evidence to be submitted.

(f) If necessary to clarify information presented by a witness or some other aspect of the matter at hand, the presiding officer shall question the witness during or at the conclusion of the testimony of that witness.

(g) The presiding officer shall allow other parties or their representatives to cross-examine each witness at the conclusion of the testimony of that witness.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.28 Reopening of the Record.

(a) At any time prior to a final decision on the appeal, any party to a proceeding or any member of the council may request the presiding officer to reopen the record to consider relevant, material, and non-duplicative testimony, arguments, or exhibits not previously considered.

(b) If the request is made after one or more parties have left the hearing, the request shall be in writing and a copy of the request shall be delivered or sent to each other party of record.

(c) If the presiding officer determines that such testimony, evidence, arguments, or exhibits are necessary to a full consideration of the issues raised by the appeal the record shall be reopened to accept the offered items.

(d) The presiding officer shall give written notice of the acceptance into the record of the offered items to all parties of record if the parties are no longer present. The presiding officer shall also set a time within which other parties may respond to or rebut the items made part of the record.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.29 Motion for Rehearing.

(a) Any person whose rights might be directly affected by a decision of the council may file with the council a motion for rehearing within 30 days of the date the written decision is issued. Copies of the motion shall also be delivered or sent to all other parties of record.

(b) A motion for rehearing shall set forth in detail the following:

- (1) The basis of the moving party's aggrievement;
- (2) The finding(s), conclusion(s), or conditions(s) to which the moving party objects;
- (3) The basis for the objection;
- (4) Whether the moving party seeks to present new or additional evidence, and if so, the nature of such evidence to be offered; and
- (5) The nature of the relief requested.

(c) New or additional evidence shall be permitted when offered to:

- (1) Cure any deficiencies in the original application or testimony;
- (2) Correct errors of form in the decision;
- (3) Request reconsideration of the conditions of the approval or of the denial; or
- (4) Challenge any facts to which official notice was taken.

(d) The council shall, at its first scheduled meeting following the receipt of such a motion, order a hearing or dismiss the motion. Any hearing held under this section shall be limited to the issues raised in the motion for rehearing. The council shall provide reasonable notice to affected persons of record of the rehearing.

(e) A council decision shall become final if no motion for rehearing is filed within

the period specified in (a), above.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99

Env-WC 203.30 Waiver of Rules. Any person may request the council to waive, for good cause, the

application of any of these rules not mandated or required by any New Hampshire statute. Requests made prior to or subsequent to a hearing shall be made in writing and shall state the basis for the request. Requests made at a hearing may be made orally, stating the basis for the request, and shall be entered into the record. If no party objects to the waiver and if council determines that good cause for the waiver exists and the interest of the parties to the proceeding not be prejudiced by the waiver, the council shall grant the request. For purposes of this section, good cause shall be determined with reference to the specific rule for which a waiver is sought.

Source. (See Revision Note at chapter heading Env-WC 200) #5469, eff 9-17-92, EXPIRED: 9-17-98

New. #6860, INTERIM, eff 10-1-98, EXPIRED: 1-29-99

New. #7011, eff 6-9-99